IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

SA.No. 26 of 1995()

AS.39/1992 of D.C. & SESSIONS COURT,KOLLAM
OS.513/1984 of PRL.M.C., KOLLAM

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APPELLANT:/1ST DEFENDANT

P.SUMATHYKUTTY AMMA, NARAYANA VILASOM
VEEDU, KOTTAKKATHU CHERRY, THRIKKADAVOOR
VILLAGE NON RESIDING AT KOCHUVEETTIL
VADAKKATHIL, VALIAPUNUKKANNOOR,
PERUMPUZHA, KOLLAM.

BY ADV. SRI.K.G.DEVARAJAN
SRI.C.V.VASUDEVAN

RESPONDENTS:PLAINTIFF

RAMAN ACHARY VIKRAMAN, MELEMUKKATHU
VEEDU, NJARACKAL CHERI, THRIKKADAVOOR VILLAGE
KOLLAM.

BY ADV. SRI.B.SURESH KUMAR
SMT.P.SUSEELA

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 23/02/2007 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P. No.64/95 & 204/95 IN S.A.NO.26/95

23.2.07 DISMISSED SD/- M.SASIDHARAN NAMBIAR
JUDGE

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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S.A. NO.26 OF 1995

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Dated this the 23rd day of February, 2007

JUDGMENT

Defendants in O.S.513/84 on the file of Munsiff Court, Kollam who are appellants in A.S.39/92 before District Court, Kollam are challenging the decree granted in favour of the respondent. Respondent instituted the suit for realisation of the amount due to him, paid by him towards chitty instalments being a subscriber of the chitty conducted by appellant. According to respondent, appellant was conducting the chitty by name "Lekshmi Chitty Fund" and her husband second defendant was the Manager and respondent was subscriber to five chitties and remitted 39 instalments. But by that time, appellant closed the chitty business and hence respondent is entitled to the amount paid by him. Appellant along with her husband filed a joint written statement admitting that appellant was conducting chitty No.3/80. It

was also contended that second defendant has nothing to do with the chitty and respondent is not entitled to a decree as against second respondent. It was further contended that respondent was a subscriber to the chitties at the rate of Rs.1000/- each and he bid the chitty for Rs.4,300/- on 9.9.81 and received the whole amount and the receipts produced by the respondent are fabricated and appellant shifted the residence from Kottakkakom to Ahemmadabad as her husband got employment there and during their absence their house was ransacked and the records were destroyed and therefore the records are not available with the appellant and appellant is not liable to pay any amount.

2. Learned Munsiff framed the necessary issues. On the evidence of PW1 and Dws 1 to 3 and Exts.A1 to A4, B1 and B2 and X1 and X2, learned Munsiff upheld the case of respondent and rejected the case of appellant and granted a decree for realisation of Rs.5,500/- with future interest at

12% for the principal amount of Rs.4,875/-. Defendants challenged that decree and judgment before the District Court, Kollam in A.S.39/92. Learned District Judge on reappreciation of evidence found that second defendant has nothing to do with the chitty and even according to respondent, he was only the manager and respondent is only entitled to get a decree against the foreman. Hence first appellate court set aside the decree granted in favour of second defendant. Rejecting the contention of appellant, the decree granted as against appellant was confirmed. This appeal is filed challenging the said decree and judgment passed by the learned District Judge.

3. The following substantial questions of law are framed.

1) Whether appreciation of evidence by courts below was proper and if so, whether the decree granted to respondent against appellant is sustainable?

2. Whether court is competent to grant

interest in excess of 6% after the date of decree when the amount claimed in the decree is not under a commercial transaction.

4. Learned counsel appearing for appellant and respondent were heard.

5. Though respondent had originally claimed decree against appellant the foreman and her husband second defendant as manager and a decree was granted by the learned Munsiff, learned District Judge held that respondent is not entitled to a decree as against second defendant. The decree as against second defendant was therefore set aside. That was not challenged and has become final. The only question in the appeal is whether respondent is entitled to the decree as against appellant.

6. Appellant admitted that respondent was a subscriber and the amount alleged in the plaint was paid by respondent towards the instalments. What was contended was that he had prized the chitty and the amount was paid after getting

acknowledgement. But no such acknowledgement was produced. The non-production was sought to be explained by contending that during the absence of the appellant and her husband, miscreants trespassed into their house and destroyed the records. Learned Munsiff and learned District Judge on appreciation of evidence, disbelieved that case. I do not find any reason to interfere with that finding.

7. There is no acceptable evidence to prove that respondent had prized the chitty or received any amount as alleged by appellants. In such circumstance, courts below rightly held that respondent is entitled to the decree for realisation of Rs.4,875/- with interest. The argument of learned counsel appearing for appellant is that when the amount due to respondent is not under a commercial transaction, and instead being the amount due under a chitty transaction, future interest could only be as provided under section 34 of C.P.C and it cannot exceed 6% and therefore

granting of interest at 12% per annum after the decree is unsustainable. There is force in the submission.

8. Section 34 provides payment of interest. As far as interest prior to the institution of the suit is concerned, the rate of interest payable is the contract rate. From the date of the suit till the date of the decree, rate of interest could be at the contract rate but it is at the discretion of the court. The court is therefore competent to award interest at the contract rate from the date of suit, till the date of decree. But after the date of the decree, unless it is acommercial transaction, the rate of interest could only be at 6%. Therefore awarding of interest subsequent to the date of decree at 12% is unsustainable.

The appeal is therefore allowed in part to the limited extent of interest payable. Decree is modified as follows:- Respondent plaintiff is entitled to realise Rs.5,500/- with interest at 12% from the date of the suit till the date of decree

at Rs.4,875/- and thereafter at 6% till realisation.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006